



Reprinted  
February 24, 2009

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## SENATE BILL No. 580

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DIGEST OF SB 580 (Updated February 23, 2009 7:13 pm - DI 110)

**Citations Affected:** IC 5-2; IC 9-24; IC 11-10; IC 22-4; IC 22-5; IC 34-28; IC 34-30; IC 35-33; IC 35-43; IC 35-44; IC 36-2; noncode.

**Synopsis:** Unauthorized alien matters. Requires the department of correction to: (1) evaluate the citizenship and immigration status of a committed offender; and (2) notify and assist the United States Department of Homeland Security under certain conditions. Provides that the fact that a defendant is a foreign national not lawfully admitted to the United States is a fact relevant to the risk of nonappearance a judicial officer must consider in setting bail. Requires a sheriff to make a reasonable effort to determine the citizenship or immigration status of certain persons confined in a county jail. Prohibits an employer from knowingly employing, after September 30, 2009, an unauthorized alien. Authorizes the attorney general to: (1) investigate a complaint that an employer knowingly employed an unauthorized alien; (2) verify the work authorization of the alleged unauthorized alien with the federal government; (3) under certain conditions, notify United States Immigration and Customs Enforcement, local law enforcement agencies, and the prosecuting attorney in the county in which an unauthorized alien is employed; and (4) maintain certain records of violation orders. Provides that a prosecuting attorney who receives notification from the attorney general may bring a civil action against an employer for knowingly employing an unauthorized alien. Prohibits the prosecuting attorney from filing an action against an employer that verifies the employment authorization of an employee through the E-Verify program. Establishes a rebuttable presumption that an employer

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**Effective:** July 1, 2009.

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**Kruse, Delph, Charbonneau, Miller,  
Stutzman, Bray, Arnold, Deig**

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January 20, 2009, read first time and referred to Committee on Pensions and Labor.  
February 19, 2009, amended, reported favorably — Do Pass.  
February 23, 2009, read second time, amended, ordered engrossed.

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did not knowingly employ an unauthorized alien if the employer complied in good faith with the federal employment verification requirements. Requires a court to dismiss an action against an employer under certain circumstances. Makes it a Class B misdemeanor to file a complaint, knowing the complaint is false or frivolous, with the attorney general. Prohibits an employer from discharging or discriminating against an employee who exercises certain actions afforded under the employment of unauthorized alien provisions. Prohibits a governmental body from enacting an ordinance, a resolution, a rule, or a policy that prohibits or limits another governmental body from sending, receiving, maintaining, or exchanging information on the citizenship or immigration status of an individual. Allows a person to bring an action to compel a governmental body to comply with the prohibition. Requires a state agency or political subdivision to verify employees through the E-Verify program. Prohibits a state agency or political subdivision from entering into or renewing a public contract for services with a contractor unless the contract requires the contractor to verify employees through the E-Verify program. Provides that: (1) a state agency or political subdivision may terminate a public contract for services under certain conditions regarding the knowing employment or retention of unauthorized aliens; and (2) if a public contract for services is terminated, a contractor is liable for actual damages. Allows a contractor of a public contract for services to terminate a contract with a subcontractor if the subcontractor employs or contracts with unauthorized aliens. Increases penalties for certain crimes. Establishes additional penalties for certain crimes. Makes committing false identity statement a Class A misdemeanor. Makes making or distributing a forged instrument a Class C felony. Makes it a Class C felony for a person to knowingly or intentionally make, with the intent to distribute, a document that is not issued by a government entity and that purports to be a government issued identification. Makes it a: (1) Class A misdemeanor to knowingly or intentionally transport or move; and (2) Class A misdemeanor to knowingly or intentionally conceal, harbor, or shield from detection; an alien, for purposes of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law.

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Reprinted  
February 24, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

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## SENATE BILL No. 580

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A BILL FOR AN ACT to amend the Indiana Code concerning immigration.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 5-2-18 IS ADDED TO THE INDIANA CODE AS
- 2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2009]:
- 4 **Chapter 18. Citizenship and Immigration Status Information**
- 5 **Sec. 1. As used in this chapter, "governmental body" has the**
- 6 **meaning set forth in IC 5-22-2-13.**
- 7 **Sec. 2. A governmental body may not enact an ordinance, a**
- 8 **resolution, a rule, or a policy that prohibits or in any way restricts**
- 9 **another governmental body, including a law enforcement officer**
- 10 **(as defined under IC 5-2-1-2), a state or local official, or a state or**
- 11 **local government employee, from taking the following actions with**
- 12 **regard to information of the citizenship or immigration status,**
- 13 **lawful or unlawful, of an individual:**
- 14 **(1) Communicating or cooperating with federal officials.**
- 15 **(2) Sending to or receiving information from the United States**
- 16 **Department of Homeland Security.**
- 17 **(3) Maintaining information.**

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(4) Exchanging information with another federal, state, or local government entity.

**Sec. 3. If a governmental body violates this chapter, a person lawfully domiciled in Indiana may bring an action to compel the governmental body to comply with this chapter.**

SECTION 2. IC 9-24-18-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) A person, except a person exempted under IC 9-24-1-7, who

~~(1)~~ knowingly or intentionally operates a motor vehicle upon a highway and

~~(2)~~ has never received a valid driving license

commits a Class C misdemeanor. **However, the offense is:**

(1) a Class A misdemeanor if the person has a prior unrelated conviction under this section;

(2) a Class D felony if the operation of the motor vehicle results in bodily injury or serious bodily injury; and

(3) a Class C felony if the operation of the motor vehicle results in the death of another person.

(b) In addition to any other penalty imposed for a conviction under this section, the court shall recommend that the person be prohibited from receiving a valid driving license for a fixed period of not less than ninety (90) days and not more than two (2) years.

(c) The court shall specify:

(1) the length of the fixed period of prohibition; and

(2) the date the fixed period of the prohibition begins;

whenever the court makes a recommendation under subsection (b).

(d) The bureau shall, upon receiving a record of conviction of a person upon a charge of operating a motor vehicle while never having received a valid driving license, prohibit the person from receiving a driving license for a fixed period of not less than ninety (90) days and not more than two (2) years. The bureau shall fix this period in accordance with the recommendation of the court that entered the conviction, as provided in subsection (c).

~~(b)~~ (e) In a prosecution under this section, the burden is on the defendant to prove by a preponderance of the evidence that the defendant had been issued a driving license or permit that was valid at the time of the alleged offense.

SECTION 3. IC 9-24-18-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. A person who counterfeits or falsely reproduces a driving license with intent to use the license or to permit another person to use the license commits a Class B misdemeanor. **However, the offense is a Class C felony if it**

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1 **is done with the intent to misrepresent citizenship or immigration**  
 2 **status.**

3 SECTION 4. IC 11-10-1-2 IS AMENDED TO READ AS  
 4 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A committed  
 5 criminal offender shall, within a reasonable time, be evaluated  
 6 regarding:

7 (1) ~~his~~ **the offender's** medical, psychological, educational,  
 8 vocational, economic and social condition, and history;

9 (2) the circumstances surrounding ~~his~~ **the offender's** present  
 10 commitment;

11 (3) ~~his~~ **the offender's** history of criminality; ~~and~~

12 **(4) the citizenship or immigration status of the offender with**  
 13 **the United States Department of Homeland Security; and**

14 ~~(4)~~ **(5)** any additional relevant matters.

15 (b) In making the evaluation prescribed in subsection (a), the  
 16 department may utilize any presentence report, any presentence  
 17 memorandum filed by the offender, any reports of any presentence  
 18 physical or mental examination, the record of the sentencing hearing,  
 19 or other information forwarded by the sentencing court or other agency,  
 20 if that information meets the department's minimum standards for  
 21 criminal offender evaluation.

22 (c) If an offender has undergone, within two (2) years before the  
 23 date of ~~his~~ **the offender's** commitment, a previous departmental  
 24 evaluation under this section, the department may rely on the previous  
 25 evaluation and the information used at that time. However, this  
 26 subsection does not deprive an offender of the right to a medical and  
 27 dental examination under IC 11-10-3.

28 **(d) If the department is unable to verify the citizenship or**  
 29 **immigration status of a committed criminal offender, the**  
 30 **department shall notify the United States Department of Homeland**  
 31 **Security that the citizenship or immigration status of the offender**  
 32 **could not be verified. The department shall assist the United States**  
 33 **Department of Homeland Security with information leading to the**  
 34 **deportation of a committed criminal offender who is unlawfully**  
 35 **present in the United States.**

36 SECTION 5. IC 11-10-2-4 IS AMENDED TO READ AS  
 37 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) A committed  
 38 offender shall, within a reasonable time, be evaluated regarding:

39 (1) ~~his~~ **the offender's** medical, psychological, educational,  
 40 vocational, economic and social condition, and history;

41 (2) the circumstances surrounding ~~his~~ **the offender's** present  
 42 commitment;

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1           (3) ~~his the offender's~~ history of delinquency; ~~and~~  
 2           **(4) the citizenship or immigration status of the offender with**  
 3           **the United States Department of Homeland Security; and**  
 4           ~~(4)~~ **(5)** any additional relevant matters.

5           (b) In making the evaluation prescribed in subsection (a), the  
 6           department may utilize reports of any precommitment physical or  
 7           mental examination or other information or records forwarded by the  
 8           committing court or other agency, if that information meets the  
 9           department's minimum standards for delinquent offender evaluation.

10          (c) If a committed offender has undergone, within one (1) year  
 11          before the date of ~~his the offender's~~ commitment, a previous  
 12          departmental evaluation under this section, the department may rely on  
 13          the previous evaluation and the information used at that time. However,  
 14          this subsection does not deprive an offender of the right to a medical  
 15          and dental examination under IC 11-10-3.

16          **(d) If the department is unable to verify the citizenship or**  
 17          **immigration status of a committed offender, the department shall**  
 18          **notify the United States Department of Homeland Security that the**  
 19          **citizenship or immigration status of the committed offender could**  
 20          **not be verified. The department shall assist the United States**  
 21          **Department of Homeland Security with information leading to the**  
 22          **deportation of a committed offender who is unlawfully present in**  
 23          **the United States.**

24          SECTION 6. IC 22-4-14-9 IS AMENDED TO READ AS  
 25          FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. **(a) As used in this**  
 26          **section, "SAVE program" means the Systematic Alien Verification**  
 27          **of Entitlements program operated by the United States**  
 28          **Department of Homeland Security or a successor program**  
 29          **designated by the United States Department of Homeland Security.**

30          **(b)** For weeks of unemployment occurring subsequent to December  
 31          31, 1977, benefits may not be paid on the basis of services performed  
 32          by an alien unless the alien is an individual who has been lawfully  
 33          admitted for permanent residence at the time the services are  
 34          performed, is lawfully present for purposes of performing the services,  
 35          or otherwise is permanently residing in the United States under color  
 36          of law at the time the services are performed (including an alien who  
 37          is lawfully present in the United States as a result of the application of  
 38          the provisions of Section 207, Section 208, or Section 212(d)(5) of the  
 39          Immigration and Nationality Act (8 U.S.C. 1157 through 1158).

40               (1) Any data or information required of individuals applying for  
 41               benefits to determine whether benefits are not payable to them  
 42               because of their alien status shall be uniformly required from all

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applicants for benefits.

(2) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of ~~his~~ **the individual's** alien status may be made except upon a preponderance of the evidence.

(3) Any modifications to the provisions of Section 3304(a)(14) of the Federal Unemployment Tax Act, as provided by P.L.94-566, which specify other conditions or other effective date than stated in this section for the denial of benefits based on services performed by aliens and which are required to be implemented under state law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, shall be considered applicable under this section.

**(c) If an individual who applies for benefits is not a citizen or national of the United States, the department shall verify the lawful presence of the individual to determine the individual's eligibility for benefits through the SAVE program. The department shall implement this subsection in accordance with federal law.**

SECTION 7. IC 22-5-1.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

**Chapter 1.5. Employment of Unauthorized Aliens**

**Sec. 1. (a) This chapter applies only to an employee that an employer hires after September 30, 2009.**

**(b) Except as provided in subsection (c), this chapter does not apply to the following:**

**(1) A public utility (as defined in IC 8-1-2-1(a)) that is subject to regulation by the Indiana utility regulatory commission under IC 8-1-2.**

**(2) A hospital licensed under IC 16-21.**

**(3) A county hospital organized under IC 16-22.**

**(4) A municipal hospital organized under IC 16-23.**

**(5) A nonprofit corporation.**

**(6) A person who operates a business of transporting emergency patients by ambulance or using a nontransporting emergency medical services vehicle (as defined in IC 16-31-3-0.5).**

**(7) A corporation organized under IC 8-1-13.**

**(8) A corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.**

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(c) The definitions in this chapter apply to this subsection. After September 30, 2009, a person listed under subsection (b) shall verify the employment eligibility of each employee of the person through the E-Verify program after hiring the employee.

Sec. 2. As used in this chapter, "agency" means any state or local administration, agency, authority, board, bureau, commission, committee, council, department, division, institution, office, service, or other similar body of government created or established by law that issues a license for purposes of operating a business in Indiana.

Sec. 3. As used in this chapter, "employee" means an individual who provides services or labor for an employer for wages or other remuneration.

Sec. 4. (a) As used in this chapter, "employer" means a person that:

- (1) transacts business in Indiana;
- (2) has a license issued by an agency; and
- (3) employs one (1) or more individuals who perform employment services in Indiana.

(b) The term includes the state, a political subdivision (as defined in IC 3-5-2-38) of the state, and a self-employed person.

Sec. 5. As used in this chapter, "E-Verify program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, s. 403(a), as amended, operated by the United States Department of Homeland Security or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

Sec. 6. As used in this chapter, "knowingly" means knowledge that may fairly be inferred through notice of certain facts and circumstances that would lead a person, through the exercise of reasonable care, to know that an employee is unlawfully present in the United States.

Sec. 7. (a) As used in this chapter, "license" means any agency permit, certificate, approval, registration, charter, or similar authorization that is:

- (1) required by law; and
- (2) issued by an agency;

for purposes of operating a business in Indiana.

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(b) The term does not include an occupational or professional license.

Sec. 8. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a partnership, or another legal entity.

Sec. 9. As used in this chapter, "unauthorized alien" has the meaning set forth in 8 U.S.C. 1324a(h)(3).

Sec. 10. An employer shall not knowingly employ an unauthorized alien.

Sec. 11. (a) The attorney general may investigate a complaint filed with the attorney general that an employer knowingly employed an unauthorized alien in violation of section 10 of this chapter.

(b) In investigating a complaint under subsection (a), the attorney general shall verify the work authorization of the alleged unauthorized alien with the federal government under 8 U.S.C. 1373(c).

(c) A complaint filed with the attorney general under subsection (a) must be:

- (1) in writing; and
- (2) signed by the individual filing the complaint.

Sec. 12. A state, county, or local official or employee may not attempt to make independently a final determination as to whether an individual is authorized to work in the United States.

Sec. 13. If, after an investigation, the attorney general determines that an employer has knowingly employed an unauthorized alien, the attorney general shall notify:

- (1) the United States Immigration and Customs Enforcement;
- (2) local law enforcement agencies; and
- (3) the prosecuting attorney in the county in which the unauthorized alien is employed.

Sec. 14. (a) If the attorney general notifies a prosecuting attorney under section 13 of this chapter that an employer has knowingly employed an unauthorized alien, the prosecuting attorney may bring a civil action for a violation of section 10 of this chapter against an employer in the county where the unauthorized alien is employed.

(b) A prosecuting attorney filing an action under subsection (a) may file only one (1) action against an employer relating to the employment of all unauthorized aliens employed by the employer at a business location of the employer at the time the prosecuting attorney files the action. The prosecuting attorney may file an

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1 additional action against an employer relating to the employment  
2 of unauthorized aliens for each business location at which the  
3 employer employs unauthorized aliens.

4 (c) The prosecuting attorney may file an additional action  
5 against an employer under this section for a second or subsequent  
6 violation of section 10 of this chapter only for violations allegedly  
7 committed by the employer after the employer receives notice that  
8 the prosecuting attorney has filed an action against the employer  
9 relating to the employment of unauthorized aliens at a specific  
10 business location under this section.

11 Sec. 15. If a prosecuting attorney files an action under section 14  
12 of this chapter, the court in which the action is filed may hold a  
13 hearing and make a determination on an expedited basis.

14 Sec. 16. Except as provided in sections 17 and 18 of this chapter,  
15 if a trier of fact determines that an employer knowingly employed  
16 an unauthorized alien in violation of section 10 of this chapter, the  
17 court may do the following:

18 (1) Order the employer to terminate the employment of all  
19 unauthorized aliens employed by the employer.

20 (2) Place the employer on probation for a three (3) year  
21 period, beginning on the date of the order. During the  
22 probationary period, the employer shall file a quarterly  
23 report with the attorney general concerning each new  
24 individual the employer hires at the specific business location  
25 where the unauthorized alien worked.

26 (3) Order the employer to file a sworn affidavit signed by the  
27 employer with the prosecuting attorney within thirty (30)  
28 calendar days after the order is issued under subdivision (1).

29 The affidavit must include a statement that the employer:

30 (A) has terminated the employment of all unauthorized  
31 aliens; and

32 (B) will not knowingly employ an unauthorized alien.

33 Sec. 17. If a trier of fact determines that an employer knowingly  
34 employed an unauthorized alien in a second violation of section 10  
35 of this chapter, the court may do the following:

36 (1) Order the employer to terminate the employment of all  
37 unauthorized aliens employed by the employer.

38 (2) Place the employer on probation for a ten (10) year period,  
39 beginning on the date of the order. During the probationary  
40 period, the employer shall file a quarterly report with the  
41 attorney general concerning each new individual the employer  
42 hires at the specific business location where the unauthorized

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alien worked.

(3) Order the employer to file a sworn affidavit signed by the employer with the prosecuting attorney within thirty (30) calendar days after the order is issued under subdivision (1).

The affidavit must include a statement that the employer:

(A) has terminated the employment of all unauthorized aliens; and

(B) will not knowingly employ an unauthorized alien.

Sec. 18. If a trier of fact determines that an employer knowingly employed an unauthorized alien in a third violation of section 10 of this chapter, the court may order the appropriate agencies to revoke the employer's license or licenses for a period determined by the court or permanently revoke all licenses held by the employer that are described in section 19(a) of this chapter.

Sec. 19. (a) This section applies to all licenses held by an employer:

(1) that are necessary to operate the employer's business at the employer's business location where an unauthorized alien worked; or

(2) if a license is not necessary at the employer's business location described in subdivision (1), that are held by the employer for the employer's primary place of business.

(b) If an employer fails to file a sworn affidavit required under section 16(3) or 17(3) of this chapter with the prosecuting attorney within thirty (30) business days after the order requiring the filing of the affidavit is issued, the court may order the appropriate agencies to suspend all licenses that are held by the employer. All licenses suspended under this subsection may remain suspended until the employer files a sworn affidavit as required under section 16(3) or 17(3) of this chapter with the prosecuting attorney.

(c) If the employer subject to an order filed under subsection (b) files a sworn affidavit required under section 16(3) or 17(3) of this chapter, the court may order the appropriate agencies to reinstate the employer's suspended licenses.

Sec. 20. A court may consider the following factors, if applicable, in deciding whether to order an agency to revoke an employer's license or licenses for a period determined by the court or permanently revoke an employer's license under section 18 of this chapter:

(1) The number of unauthorized aliens employed by the employer.

(2) Any prior misconduct by the employer.

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(3) The degree of harm resulting from the violation.

(4) The extent to which the employer made good faith efforts to comply with any applicable requirements under this chapter.

(5) The duration of the violation.

(6) The role of the directors, officers, or agents of the employer in the violation.

(7) Any other factors the court considers relevant.

Sec. 21. (a) If an agency receives an order from a court under section 19(b) of this chapter, the agency shall immediately suspend the license or licenses described in section 19(a) of this chapter that are held by the employer to which the order relates.

(b) If an agency receives an order from a court under section 18 of this chapter, the agency shall immediately revoke the license or licenses described in section 19(a) of this chapter that are held by the employer to which the order relates.

Sec. 22. A court shall send copies of all orders issued under sections 16, 17, 18, and 19 of this chapter to the attorney general.

Sec. 23. (a) In determining whether an individual is an unauthorized alien for purposes of this chapter, a court may consider only the federal government's verification or status information provided under 8 U.S.C. 1373(c).

(b) The federal government's verification or status information provided under 8 U.S.C. 1373(c) creates a rebuttable presumption of an individual's lawful status.

(c) The court may:

(1) take judicial notice of the federal government's verification or status information; and

(2) request the federal government to provide automated or testimonial verification under 8 U.S.C. 1373(c).

Sec. 24. A prosecuting attorney may not file an action against an employer under section 14 of this chapter for knowingly employing an unauthorized alien if the employer verified the employment authorization of the employed individual through the E-Verify program.

Sec. 25. There is a rebuttable presumption that an employer did not knowingly employ an unauthorized alien in violation of section 10 of this chapter if the employer complied in good faith with the requirements of 8 U.S.C. 1324a(b).

Sec. 26. A court shall dismiss an action against an employer filed under section 14 of this chapter for knowingly employing an unauthorized alien if the employer establishes:

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(1) that the employee performed agricultural labor or provided services of a temporary or seasonal nature as described in:

(A) 8 U.S.C. 1101(a)(15)(H)(ii)(a); or

(B) 8 U.S.C. 1101 (a)(15)(H)(ii)(b); and

(2) that the employer has complied in good faith with all federal laws and regulations governing the foreign worker program described in:

(A) 8 U.S.C. 1101(a)(15)(H)(ii)(a); or

(B) 8 U.S.C. 1101(a)(15)(H)(ii)(b).

**Sec. 27. The attorney general shall:**

(1) maintain copies of orders received under section 22 of this chapter;

(2) make the orders available on the attorney general's Internet web site; and

(3) establish and maintain a data base of the names and addresses of the employers that have a violation under this chapter.

**Sec. 28. This chapter does not require an employer to take any action that the employer believes in good faith would violate federal law.**

**Sec. 29. A person who files a complaint with the attorney general or the department under this chapter, knowing that the complaint is false or frivolous, commits a Class B misdemeanor.**

**Sec. 30. (a) An employer may not discharge an employee or in any way discriminate against any employee because the employee:**

(1) has filed a complaint or instituted or caused to be instituted any proceeding under or related to this chapter;

(2) has testified or is about to testify in any proceeding under this chapter; or

(3) exercised on behalf of the employee or others any right afforded by this chapter.

**(b) Any employee who believes that the employee has been discharged or otherwise discriminated against by any person in violation of this section may, within thirty (30) calendar days after the violation occurs, file a complaint with the commissioner of labor alleging the discrimination.**

**(c) Upon receipt of a complaint under subsection (b), the commissioner of labor shall investigate as the commissioner of labor considers appropriate.**

**(d) If after an investigation, the commissioner of labor determines that the provisions of this section have been violated,**

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1 the commissioner of labor, through the attorney general, shall, not  
 2 later than one hundred twenty (120) days after receipt of the  
 3 complaint under subsection (b), bring an action in the circuit  
 4 courts of Indiana.

5 (e) The circuit courts of Indiana have jurisdiction to restrain  
 6 violations of this section and order all appropriate relief, including  
 7 rehiring, or reinstatement of the employee to the employee's  
 8 former position with back pay, after taking into account any  
 9 interim earnings of the employee.

10 (f) Not later than ninety (90) days after the receipt of a  
 11 complaint filed under this section, the commissioner of labor shall  
 12 notify the complainant in writing of a determination under this  
 13 section.

14 Sec. 31. The suspension or revocation of a license under this  
 15 chapter does not relieve an employer from an obligation to  
 16 withhold, collect, or pay income tax on wages paid by the employer  
 17 to an employee.

18 Sec. 32. This chapter shall be enforced without regard to race or  
 19 national origin.

20 SECTION 8. IC 22-5-1.7 IS ADDED TO THE INDIANA CODE  
 21 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 22 JULY 1, 2009]:

23 **Chapter. 1.7. Public Contract for Services; Unauthorized Aliens**

24 Sec. 1. As used in this chapter, "contractor" means a person  
 25 that has or is attempting to enter into a public contract for services  
 26 with a state agency or political subdivision.

27 Sec. 2. As used in this chapter, "E-Verify program" means the  
 28 electronic verification of work authorization program of the Illegal  
 29 Immigration Reform and Immigration Responsibility Act of 1996  
 30 (P.L. 104-208), Division C, Title IV, s. 403(a), as amended, operated  
 31 by the United States Department of Homeland Security, or a  
 32 successor work authorization program designated by the United  
 33 States Department of Homeland Security or other federal agency  
 34 authorized to verify the work authorization status of newly hired  
 35 employees under the Immigration Reform and Control Act of 1986  
 36 (P.L. 99-603).

37 Sec. 3. As used in this chapter, "person" means an individual, a  
 38 corporation, a limited liability company, a partnership, or another  
 39 legal entity.

40 Sec. 4. As used in this chapter, "political subdivision" has the  
 41 meaning set forth in 36-1-2-13.

42 Sec. 5. As used in this chapter, "public contract for services"

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1 means any type of agreement between a state agency or a political  
2 subdivision and a contractor for the procurement of services.

3 Sec. 6. As used in this chapter, "state agency" has the meaning  
4 set forth in IC 4-6-3-1.

5 Sec. 7. As used in this chapter, "subcontractor" means a person  
6 that:

7 (1) is a party to a contract with a contractor; and

8 (2) provides services for work the contractor is performing  
9 under a public contract for services.

10 Sec. 8. As used in this chapter, "unauthorized alien" has the  
11 meaning set forth in 8 U.S.C. 1324a(h)(3).

12 Sec. 9. A state agency or political subdivision shall use the  
13 E-Verify program to verify the work eligibility status of all  
14 employees of the state agency or political subdivision hired after  
15 June 30, 2009.

16 Sec. 10. A state agency or political subdivision may not enter  
17 into or renew a public contract for services with a contractor  
18 unless the public contract contains a provision requiring the  
19 contractor to enroll in and verify the work eligibility status of all  
20 newly hired employees through the E-Verify program.

21 Sec. 11. Before a state agency or political subdivision may enter  
22 into a public contract for services with a contractor, the contractor  
23 shall certify in a manner consistent with federal law that the  
24 contractor, at the time of the certification, does not employ or  
25 contract with an unauthorized alien.

26 Sec. 12. (a) A contractor or a subcontractor may not:

27 (1) knowingly employ or contract with an unauthorized alien;  
28 or

29 (2) retain an employee or contract with a person that the  
30 contractor or subcontractor subsequently learns is an  
31 unauthorized alien.

32 (b) If a contractor violates this section, the state agency or  
33 political subdivision shall require the contractor to remedy the  
34 violation not later than thirty (30) days after the date the state  
35 agency or political subdivision notifies the contractor of the  
36 violation.

37 (c) There is a rebuttable presumption that a contractor did not  
38 knowingly employ an unauthorized alien if the contractor verified  
39 the work eligibility status of the employee through the E-Verify  
40 program.

41 Sec. 13. (a) Except as provided in subsection (b), if the  
42 contractor fails to remedy the violation within the thirty (30) day

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period provided under section 12(b) of this chapter, the state agency or political subdivision shall terminate the public contract for services with the contractor for breach of the public contract for services.

(b) If a contractor employs or contracts with an unauthorized alien but the state agency or political subdivision (whichever the contractor has a public contract for services with) determines that terminating the public contract for services under subsection (a) would be detrimental to the public interest or public property, the state agency or political subdivision may allow the public contract for services to remain in effect until the state agency or political subdivision procures a new contractor.

(c) If a state agency or political subdivision terminates a public contract for services under subsection (a), the contractor shall be liable to the state agency or political subdivision for actual damages.

Sec. 14. A contractor may file an action with a circuit or superior court having jurisdiction in the county to challenge:

- (1) a notice of a violation to the contractor under section 12(b) of this chapter not later than twenty (20) days after the contractor receives the notice; or
- (2) a termination of a public contract for services under section 13(a) of this chapter not later than twenty (20) days after the state agency or political subdivision terminates the public contract for services with the contractor.

Sec. 15. If a contractor uses a subcontractor, the subcontractor shall certify to the contractor in a manner consistent with federal law that the subcontractor, at the time of certification, does not employ or contract with an unauthorized alien.

Sec. 16. A contractor shall maintain on file a certification of a subcontractor under section 15 of this chapter throughout the duration of the term of a contract with the subcontractor.

Sec. 17. (a) If a contractor determines that a subcontractor is in violation of this chapter, the contractor may terminate a contract with the subcontractor for the violation.

(b) A contract terminated under subsection (a) for a violation of this chapter by a subcontractor may not be considered a breach of contract by the contractor or the subcontractor.

(c) A subcontractor may file an action with a circuit or superior court having jurisdiction in the county to challenge a termination of a contract under subsection (a) not later than twenty (20) days after the contractor terminates the contract with the

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1 **subcontractor.**

2 SECTION 9. IC 34-28-7 IS ADDED TO THE INDIANA CODE AS  
3 A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY  
4 1, 2009]:

5 **Chapter 7. Offenses Related to Identification Numbers and**  
6 **Documents**

7 **Sec. 1.** As used in this chapter, "consular identification" means  
8 an identification, other than a passport, issued by the government  
9 of a foreign state for the purpose of providing consular services in  
10 the United States to a national of the foreign state.

11 **Sec. 2.** As used in this chapter, "individual taxpayer  
12 identification number" means a tax processing number issued by  
13 the United States Internal Revenue Service for the purpose of  
14 facilitating federal tax reporting by individuals who are not eligible  
15 to obtain a federal Social Security number.

16 **Sec. 3. (a)** This section does not apply to a law enforcement  
17 officer who is presented with a consular identification during the  
18 investigation of a crime.

19 **(b)** Except as otherwise provided under federal law or to  
20 document the foreign nationality of a cardholder, a person who  
21 knowingly or intentionally offers in writing, accepts, or records a  
22 consular identification for any public purpose commits a Class C  
23 infraction. However, the person commits:

24 **(1)** a Class B infraction for a second offense; and

25 **(2)** a Class A infraction for a third or subsequent offense.

26 **Sec. 4.** Except as otherwise provided under law, a person who  
27 knowingly or intentionally offers in writing, accepts, or records an  
28 individual taxpayer identification number as a valid form of  
29 identification for any public or private purpose, other than for  
30 reporting, payment, or other processing of federal or state personal  
31 taxation for which a Social Security number would otherwise be  
32 required of a United States citizen, commits a Class C infraction.  
33 However, the person commits:

34 **(1)** a Class B infraction for a second offense; and

35 **(2)** a Class A infraction for a third or subsequent offense.

36 SECTION 10. IC 34-30-2-87.3 IS ADDED TO THE INDIANA  
37 CODE AS A **NEW SECTION** TO READ AS FOLLOWS  
38 [EFFECTIVE JULY 1, 2009]: **Sec. 87.3. IC 22-5-1.5-24 (Concerning**  
39 **certain employers that employ unauthorized aliens).**

40 SECTION 11. IC 35-33-8-4 IS AMENDED TO READ AS  
41 FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4. (a)** The court shall  
42 order the amount in which a person charged by an indictment or

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1 information is to be held to bail, and the clerk shall enter the order on  
 2 the order book and indorse the amount on each warrant when issued.  
 3 If no order fixing the amount of bail has been made, the sheriff shall  
 4 present the warrant to the judge of an appropriate court of criminal  
 5 jurisdiction, and the judge shall indorse on the warrant the amount of  
 6 bail.

7 (b) Bail may not be set higher than that amount reasonably required  
 8 to assure the defendant's appearance in court or to assure the physical  
 9 safety of another person or the community if the court finds by clear  
 10 and convincing evidence that the defendant poses a risk to the physical  
 11 safety of another person or the community. In setting and accepting an  
 12 amount of bail, the judicial officer shall take into account all facts  
 13 relevant to the risk of nonappearance, including:

14 (1) the length and character of the defendant's residence in the  
 15 community;

16 (2) the defendant's employment status and history and his ability  
 17 to give bail;

18 (3) the defendant's family ties and relationships;

19 (4) the defendant's character, reputation, habits, and mental  
 20 condition;

21 (5) the defendant's criminal or juvenile record, insofar as it  
 22 demonstrates instability and a disdain for the court's authority to  
 23 bring him to trial;

24 (6) the defendant's previous record in not responding to court  
 25 appearances when required or with respect to flight to avoid  
 26 criminal prosecution;

27 (7) the nature and gravity of the offense and the potential penalty  
 28 faced, insofar as these factors are relevant to the risk of  
 29 nonappearance;

30 (8) the source of funds or property to be used to post bail or to pay  
 31 a premium, insofar as it affects the risk of nonappearance; and

32 **(9) that the defendant is a foreign national who has not been**  
 33 **lawfully admitted to the United States; and**

34 ~~(9)~~ **(10)** any other factors, including any evidence of instability  
 35 and a disdain for authority, which might indicate that the  
 36 defendant might not recognize and adhere to the authority of the  
 37 court to bring him to trial.

38 SECTION 12. IC 35-43-5-2, AS AMENDED BY P.L.106-2006,  
 39 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 40 JULY 1, 2009]: Sec. 2. (a) A person who knowingly or intentionally:

41 (1) makes or utters a written instrument in such a manner that it  
 42 purports to have been made:

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- 1 (A) by another person;  
 2 (B) at another time;  
 3 (C) with different provisions; or  
 4 (D) by authority of one who did not give authority; or  
 5 (2) possesses more than one (1) written instrument knowing that  
 6 the written instruments were made in a manner that they purport  
 7 to have been made:  
 8 (A) by another person;  
 9 (B) at another time;  
 10 (C) with different provisions; or  
 11 (D) by authority of one who did not give authority;  
 12 commits counterfeiting, a Class D felony.  
 13 **(b) A person who knowingly or intentionally makes or**  
 14 **distributes more than one (1) written instrument in such a manner**  
 15 **that the written instrument purports to have been made:**  
 16 **(1) by another person;**  
 17 **(2) at another time;**  
 18 **(3) with different provisions; or**  
 19 **(4) by authority of one who did not give authority;**  
 20 **commits making or distributing a forged instrument, a Class C**  
 21 **felony.**  
 22 ~~(b)~~ **(c)** A person who, with intent to defraud, makes, utters, or  
 23 possesses a written instrument in such a manner that it purports to have  
 24 been made:  
 25 (1) by another person;  
 26 (2) at another time;  
 27 (3) with different provisions; or  
 28 (4) by authority of one who did not give authority;  
 29 commits forgery, a Class C felony.  
 30 ~~(c)~~ **(d)** This subsection applies to a person who applies for a driver's  
 31 license (as defined in IC 9-13-2-48). A person who:  
 32 (1) knowingly or intentionally uses a false or fictitious name or  
 33 gives a false or fictitious address in an application for a driver's  
 34 license or for a renewal or a duplicate of a driver's license; or  
 35 (2) knowingly or intentionally makes a false statement or conceals  
 36 a material fact or otherwise commits fraud in an application for a  
 37 driver's license;  
 38 commits application fraud, a Class D felony.  
 39 ~~(d)~~ **(e)** This subsection applies to a person who applies for a state  
 40 identification card (as issued under IC 9-24-16). A person who:  
 41 (1) knowingly or intentionally uses false information in an  
 42 application for an identification card or for a renewal or duplicate

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1 of an identification card; or

2 (2) knowingly or intentionally makes a false statement or  
3 otherwise commits fraud in an application for an identification  
4 card;

5 commits application fraud, a Class D felony.

6 SECTION 13. IC 35-43-5-2.5, AS ADDED BY P.L.109-2006,  
7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 JULY 1, 2009]: Sec. 2.5. **(a)** A person who knowingly or intentionally  
9 possesses ~~produces, or distributes~~ a document not issued by a  
10 government entity that purports to be a government issued  
11 identification commits a Class A misdemeanor.

12 **(b) A person who knowingly or intentionally makes a document**  
13 **that is not issued by a government entity and that purports to be a**  
14 **government issued identification commits a Class D felony.**

15 **(c) A person who knowingly or intentionally makes, with the**  
16 **intent to distribute, a document that is not issued by a government**  
17 **entity and that purports to be a government issued identification**  
18 **commits a Class C felony.**

19 SECTION 14. IC 35-43-5-3.6 IS AMENDED TO READ AS  
20 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3.6. A person who  
21 knowingly or intentionally obtains, possesses, transfers, or uses the  
22 identifying information of another person **or uses false or fictitious**  
23 **identifying information** with intent to:

24 (1) commit terrorism; or

25 (2) obtain or transport a weapon of mass destruction;

26 commits terroristic deception, a ~~Class C~~ **Class B** felony.

27 SECTION 15. IC 35-44-2-5 IS ADDED TO THE INDIANA CODE  
28 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
29 1, 2009]: Sec. 5. **(a) A person who, in a five (5) year period, has**  
30 **knowingly made two (2) or more material statements concerning**  
31 **the person's identity in one (1) or more official proceedings or**  
32 **investigations, with the intent to mislead public servants, which are**  
33 **inconsistent to the degree that one (1) of them is necessarily false,**  
34 **commits false identity statement, a Class A misdemeanor.**

35 **(b) It is a defense to a prosecution under this section that both**  
36 **material statements concerning the person's identity are accurate**  
37 **or were accurate in the past.**

38 **(c) In a prosecution under subsection (a) of this section:**

39 (1) the indictment or information need not specify which  
40 statement is actually false; and

41 (2) the falsity of a statement may be established sufficient for  
42 conviction, by proof that the defendant made irreconcilably

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contradictory statements concerning the person's identity.

SECTION 16. IC 35-44-5 IS ADDED TO THE INDIANA CODE  
AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
JULY 1, 2009]:

**Chapter 5. Offenses Relating to Illegal Aliens**

**Sec. 1. This chapter does not apply to the following:**

- (1) A church or religious organization.
- (2) The provision of assistance for health care items and services that are necessary for the treatment of an emergency medical condition of an individual.
- (3) A health care provider (as defined in IC 16-18-2-163(a)) that is providing health care services.
- (4) An attorney or other person that is providing legal services.
- (5) A person who:
  - (A) is a spouse of an alien or who stands in relation of parent or child to an alien; and
  - (B) would otherwise commit an offense under this chapter with respect to the alien.

**Sec. 2. As used in this chapter, "alien" has the meaning set forth in 8 U.S.C. 1101(a).**

**Sec. 3. Except as provided in section 5 of this chapter, a person who knowingly or intentionally:**

- (1) transports; or
- (2) moves;

an alien, for the purpose of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of the law commits transporting an illegal alien, a Class A misdemeanor.

**Sec. 4. Except as provided in section 5 of this chapter, a person who knowingly or intentionally:**

- (1) conceals;
- (2) harbors; or
- (3) shields from detection;

an alien in any place, including a building or means of transportation, for the purpose of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law commits harboring an illegal alien, a Class A misdemeanor.

**Sec. 5. (a) Except as provided under subsection (b), an offense**

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under section 3 or 4 of this chapter is a Class D felony if the:

- (1) person has a prior unrelated conviction under section 3 or 4 of this chapter; or
- (2) offense involved more than five (5) aliens.

(b) The offense is a Class C felony if the person has a prior unrelated conviction under this section.

Sec. 6. It is a defense to a prosecution under section 4(2) of this chapter that a landlord, before renting real property to a person, was provided with a driver's license from any state or other lawful United States identification, including a Social Security card, passport, or other unexpired document issued by the federal government that evidences that the person is authorized to be in the United States.

Sec. 7. A determination by the United States Department of Homeland Security that an alien has come to, entered, or remained in the United States in violation of law is evidence that the alien is in the United States in violation of law.

SECTION 17. IC 36-2-13-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7.5. (a) The sheriff shall make a reasonable effort to determine the citizenship or immigration status with the United States Department of Homeland Security of a person who is:

- (1) charged with a felony or with operating a vehicle while intoxicated; and
- (2) confined, for any period, in a county jail.

(b) If the sheriff is unable to verify the citizenship or immigration status of a person described under subsection (a), the sheriff shall notify the United States Department of Homeland Security that the citizenship or immigration status of the person described in subsection (a) could not be verified. The sheriff shall assist the United States Department of Homeland Security with information leading to the deportation of a person described in subsection (a) who is unlawfully present in the United States.

(c) Upon request from the department of correction, the sheriff shall make available a copy of any information or documents the sheriff collects in attempting to determine the citizenship or immigration status of a person under this section to the department of correction.

SECTION 18. [EFFECTIVE JULY 1, 2009] A prosecuting attorney may not file an action against an employer under IC 22-5-1.5-14, as added by this act, only for a violation of

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1     **IC 22-5-1.5-10, as added by this act, that occurs after September**  
 2     **30, 2009.**

3     SECTION 19. [EFFECTIVE JULY 1, 2009] **IC 35-44-2-5,**  
 4     **IC 35-44-5-4, and IC 35-44-5-5, all as added by this act, and**  
 5     **IC 9-24-18-1, IC 9-24-18-7, IC 35-43-5-2, and IC 35-43-5-3.6, all as**  
 6     **amended by this act, apply only to crimes committed after June 30,**  
 7     **2009.**

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## COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 580, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning immigration.

Page 4, delete lines 24 through 30.

Page 5, delete lines 27 through 42, begin a new paragraph and insert:

"SECTION 7. IC 22-5-1.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

**Chapter 1.5. Employment of Unauthorized Aliens**

**Sec. 1. (a) This chapter applies only to an employee that an employer hires after September 30, 2009.**

**(b) Except as provided in subsection (c), this chapter does not apply to the following:**

- (1) A public utility (as defined in IC 8-1-2-1(a)) that is subject to regulation by the Indiana utility regulatory commission under IC 8-1-2.**
- (2) A hospital licensed under IC 16-21.**
- (3) A county hospital organized under IC 16-22.**
- (4) A municipal hospital organized under IC 16-23.**
- (5) A nonprofit corporation.**
- (6) A person who operates a business of transporting emergency patients by ambulance or using a nontransporting emergency medical services vehicle (as defined in IC 16-31-3-0.5).**
- (7) A corporation organized under IC 8-1-13.**
- (8) A corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.**

**(c) The definitions in this chapter apply to this subsection. After September 30, 2009, a person listed under subsection (b) shall verify the employment eligibility of each employee of the person through the E-Verify program after hiring the employee.**

**Sec. 2. As used in this chapter, "agency" means any state or local administration, agency, authority, board, bureau, commission, committee, council, department, division, institution, office, service, or other similar body of government created or**

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established by law that issues a license for purposes of operating a business in Indiana.

**Sec. 3.** As used in this chapter, "employee" means an individual who:

- (1) works or is hired to work for at least one thousand five hundred (1,500) hours during a twelve (12) month period;
- (2) performs services for an employer; and
- (3) is an individual from whom the employer is required to withhold wages under IC 6-3-4-8 or is an employee described in IC 6-3-4-8(l).

**Sec. 4. (a)** As used in this chapter, "employer" means a person that:

- (1) transacts business in Indiana;
- (2) has a license issued by an agency; and
- (3) employs one (1) or more individuals who perform employment services in Indiana.

(b) The term includes the state, a political subdivision (as defined in IC 3-5-2-38) of the state, and a self-employed person.

**Sec. 5.** As used in this chapter, "E-Verify program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, s. 403(a), as amended, operated by the United States Department of Homeland Security or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

**Sec. 6.** As used in this chapter, "knowingly" has the meaning set forth in IC 35-41-2-2.

**Sec. 7. (a)** As used in this chapter, "license" means any agency permit, certificate, approval, registration, charter, or similar authorization that is:

- (1) required by law; and
- (2) issued by an agency;

for purposes of operating a business in Indiana.

(b) The term does not include an occupational or professional license.

**Sec. 8.** As used in this chapter, "person" means an individual, a corporation, a limited liability company, a partnership, or another legal entity.

**Sec. 9.** As used in this chapter, "unauthorized alien" has the

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meaning set forth in 8 U.S.C. 1324a(h)(3).

**Sec. 10.** An employer shall not knowingly employ an unauthorized alien.

**Sec. 11. (a)** The attorney general may investigate a complaint filed with the attorney general that an employer knowingly employed an unauthorized alien in violation of section 10 of this chapter.

**(b)** In investigating a complaint under subsection (a), the attorney general shall verify the work authorization of the alleged unauthorized alien with the federal government under 8 U.S.C. 1373(c).

**(c)** A complaint filed with the attorney general under subsection (a) must be:

- (1)** in writing; and
- (2)** signed by the individual filing the complaint.

**Sec. 12.** A state, county, or local official or employee may not attempt to make independently a final determination as to whether an individual is authorized to work in the United States.

**Sec. 13.** If, after an investigation, the attorney general determines that an employer has knowingly employed an unauthorized alien, the attorney general shall notify:

- (1)** the United States Immigration and Customs Enforcement;
- (2)** local law enforcement agencies; and
- (3)** the prosecuting attorney in the county in which the unauthorized alien is employed.

**Sec. 14. (a)** If the attorney general notifies a prosecuting attorney under section 13 of this chapter that an employer has knowingly employed an unauthorized alien, the prosecuting attorney may bring a civil action for a violation of section 10 of this chapter against an employer in the county where the unauthorized alien is employed.

**(b)** A prosecuting attorney filing an action under subsection (a) may file only one (1) action against an employer relating to the employment of all unauthorized aliens employed by the employer at a business location of the employer at the time the prosecuting attorney files the action. The prosecuting attorney may file an additional action against an employer relating to the employment of unauthorized aliens for each business location at which the employer employs unauthorized aliens.

**(c)** The prosecuting attorney may file an additional action against an employer under this section for a second or subsequent violation of section 10 of this chapter only for violations allegedly

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committed by the employer after the employer receives notice that the prosecuting attorney has filed an action against the employer relating to the employment of unauthorized aliens at a specific business location under this section.

**Sec. 15.** If a prosecuting attorney files an action under section 14 of this chapter, the court in which the action is filed may hold a hearing and make a determination on an expedited basis.

**Sec. 16.** Except as provided in sections 17, 18, and 19 of this chapter, if a trier of fact determines that an employer knowingly employed an unauthorized alien in violation of section 10 of this chapter, the court may do the following:

- (1) Order the employer to terminate the employment of all unauthorized aliens employed by the employer.
- (2) Place the employer on probation for a one (1) year period, beginning on the date of the order. During the probationary period, the employer shall file a quarterly report with the attorney general concerning each new individual the employer hires at the specific business location where the unauthorized alien worked.
- (3) Order the employer to file a sworn affidavit signed by the employer with the prosecuting attorney within thirty (30) calendar days after the order is issued under subdivision (1). The affidavit must include a statement that the employer:
  - (A) has terminated the employment of all unauthorized aliens; and
  - (B) will not knowingly employ an unauthorized alien.

**Sec. 17.** If a trier of fact determines that an employer knowingly employed an unauthorized alien in a second violation of section 10 of this chapter, the court may do the following:

- (1) Order the employer to terminate the employment of all unauthorized aliens employed by the employer.
- (2) Place the employer on probation for a five (5) year period, beginning on the date of the order. During the probationary period, the employer shall file a quarterly report with the attorney general concerning each new individual the employer hires at the specific business location where the unauthorized alien worked.
- (3) Order the employer to file a sworn affidavit signed by the employer with the prosecuting attorney within thirty (30) calendar days after the order is issued under subdivision (1). The affidavit must include a statement that the employer:
  - (A) has terminated the employment of all unauthorized

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aliens; and

(B) will not knowingly employ an unauthorized alien.

**Sec. 18.** If a trier of fact determines that an employer knowingly employed an unauthorized alien in a third violation of section 10 of this chapter, the court may do the following:

(1) Order the employer to terminate the employment of all unauthorized aliens employed by the employer.

(2) Place the employer on probation for a seven (7) year period, beginning on the date of the order. During the probationary period, the employer shall file a quarterly report with the attorney general concerning each new individual the employer hires at the specific business location where the unauthorized alien worked.

(3) Order the employer to file a sworn affidavit signed by the employer with the prosecuting attorney within thirty (30) calendar days after the order is issued under subdivision (1).

The affidavit must include a statement that the employer:

(A) has terminated the employment of all unauthorized aliens; and

(B) will not knowingly employ an unauthorized alien.

**Sec. 19.** If a trier of fact determines that an employer knowingly employed an unauthorized alien in a fourth violation of section 10 of this chapter, the court may order the appropriate agencies to revoke the employer's license or licenses for a period determined by the court or permanently revoke all licenses held by the employer that are described in section 20(a) of this chapter.

**Sec. 20. (a)** This section applies to all licenses held by an employer:

(1) that are necessary to operate the employer's business at the employer's business location where an unauthorized alien worked; or

(2) if a license is not necessary at the employer's business location described in subdivision (1), that are held by the employer for the employer's primary place of business.

(b) If an employer fails to file a sworn affidavit required under section 16(3), 17(3), or 18(3) of this chapter with the prosecuting attorney within thirty (30) business days after the order requiring the filing of the affidavit is issued, the court may order the appropriate agencies to suspend all licenses that are held by the employer. All licenses suspended under this subsection may remain suspended until the employer files a sworn affidavit as required under section 16(3), 17(3), or 18(3) of this chapter with the

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prosecuting attorney.

(c) If the employer subject to an order filed under subsection (b) files a sworn affidavit required under section 16(3), 17(3), or 18(3) of this chapter, the court may order the appropriate agencies to reinstate the employer's suspended licenses.

**Sec. 21.** A court may consider the following factors, if applicable, in deciding whether to order an agency to revoke an employer's license or licenses for a period determined by the court or permanently revoke an employer's license under section 19 of this chapter:

- (1) The number of unauthorized aliens employed by the employer.
- (2) Any prior misconduct by the employer.
- (3) The degree of harm resulting from the violation.
- (4) The extent to which the employer made good faith efforts to comply with any applicable requirements under this chapter.
- (5) The duration of the violation.
- (6) The role of the directors, officers, or agents of the employer in the violation.
- (7) Any other factors the court considers relevant.

**Sec. 22.** (a) If an agency receives an order from a court under section 20(b) of this chapter, the agency shall immediately suspend the license or licenses described in section 20(a) of this chapter that are held by the employer to which the order relates.

(b) If an agency receives an order from a court under section 19 of this chapter, the agency shall immediately revoke the license or licenses described in section 20(a) of this chapter that are held by the employer to which the order relates.

**Sec. 23.** A court shall send copies of all orders issued under sections 16, 17, 18, 19, and 20 of this chapter to the attorney general.

**Sec. 24.** (a) In determining whether an individual is an unauthorized alien for purposes of this chapter, a court may consider only the federal government's verification or status information provided under 8 U.S.C. 1373(c).

(b) The federal government's verification or status information provided under 8 U.S.C. 1373(c) creates a rebuttable presumption of an individual's lawful status.

(c) The court may:

- (1) take judicial notice of the federal government's verification or status information; and

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(2) request the federal government to provide automated or testimonial verification under 8 U.S.C. 1373(c).

**Sec. 25.** A prosecuting attorney may not file an action against an employer under section 14 of this chapter for knowingly employing an unauthorized alien if the employer verified the employment authorization of the employed individual through the E-Verify program.

**Sec. 26.** An employer may establish as an affirmative defense against an alleged violation under section 10 of this chapter that the employer complied in good faith with the requirements of 8 U.S.C. 1324a(b).

**Sec. 27.** The attorney general shall:

- (1) maintain copies of orders received under section 23 of this chapter;
- (2) make the orders available on the attorney general's Internet web site; and
- (3) establish and maintain a data base of the names and addresses of the employers that have a violation under this chapter.

**Sec. 28.** This chapter does not require an employer to take any action that the employer believes in good faith would violate federal law.

**Sec. 29.** A person who files a complaint with the attorney general or the department under this chapter, knowing that the complaint is false or frivolous, commits a Class B misdemeanor.

**Sec. 30. (a)** An employer may not discharge an employee or in any way discriminate against any employee because the employee:

- (1) has filed a complaint or instituted or caused to be instituted any proceeding under or related to this chapter;
- (2) has testified or is about to testify in any proceeding under this chapter; or
- (3) exercised on behalf of the employee or others any right afforded by this chapter.

(b) Any employee who believes that the employee has been discharged or otherwise discriminated against by any person in violation of this section may, within thirty (30) calendar days after the violation occurs, file a complaint with the commissioner of labor alleging the discrimination.

(c) Upon receipt of a complaint under subsection (b), the commissioner of labor shall investigate as the commissioner of labor considers appropriate.

(d) If after an investigation, the commissioner of labor

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determines that the provisions of this section have been violated, the commissioner of labor, through the attorney general, shall, not later than one hundred twenty (120) days after receipt of the complaint under subsection (b), bring an action in the circuit courts of Indiana.

(e) The circuit courts of Indiana have jurisdiction to restrain violations of this section and order all appropriate relief, including rehiring, or reinstatement of the employee to the employee's former position with back pay, after taking into account any interim earnings of the employee.

(f) Not later than ninety (90) days after the receipt of a complaint filed under this section, the commissioner of labor shall notify the complainant in writing of a determination under this section.

**Sec. 31.** The suspension or revocation of a license under this chapter does not relieve an employer from an obligation to withhold, collect, or pay income tax on wages paid by the employer to an employee.

**Sec. 32.** This chapter shall be enforced without regard to race or national origin."

Delete pages 6 through 11.

Page 12, delete lines 1 through 34.

Page 16, line 11, delete "IC 22-5-1.5-26" and insert "IC 22-5-1.5-25".

Page 19, line 2, after "who" insert ", in a five (5) year period,".

Page 20, between lines 32 and 33, begin a new paragraph and insert:

"SECTION 17. IC 36-2-13-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 7.5. (a)** The sheriff shall make a reasonable effort to determine the citizenship or immigration status with the United States Department of Homeland Security of a person who is:

(1) charged with a felony or with operating a vehicle while intoxicated; and

(2) confined, for any period, in a county jail.

(b) If the sheriff is unable to verify the citizenship or immigration status of a person described under subsection (a), the sheriff shall notify the United States Department of Homeland Security that the citizenship or immigration status of the person described in subsection (a) could not be verified. The sheriff shall assist the United States Department of Homeland Security with information leading to the deportation of a person described in

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subsection (a) who is unlawfully present in the United States.

(c) Upon request from the department of correction, the sheriff shall make available a copy of any information or documents the sheriff collects in attempting to determine the citizenship or immigration status of a person under this section to the department of correction."

Page 20, delete lines 33 through 42.

Page 21, delete lines 1 through 19.

Page 21, line 20, delete "The department of" and insert "**A prosecuting attorney may not file an action**".

Page 21, line 21, delete "labor may initiate an administrative proceeding".

Page 21, line 22, delete "IC 22-5-1.5-15," and insert "**IC 22-5-1.5-14,**".

Page 21, line 23, delete "IC 22-5-1.5-11," and insert "**IC 22-5-1.5-10,**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 580 as introduced.)

KRUSE, Chairperson

Committee Vote: Yeas 7, Nays 0.

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#### SENATE MOTION

Madam President: I move that Senate Bill 580 be amended to read as follows:

Page 6, line 12, delete ":" and insert "**provides services or labor for an employer for wages or other remuneration.**".

Page 6, delete lines 13 through 18.

Page 6, line 37, delete "has the meaning set" and insert "**means knowledge that may fairly be inferred through notice of certain facts and circumstances that would lead a person, through the exercise of reasonable care, to know that an employee is unlawfully present in the United States.**".

Page 6, delete line 38.

Page 8, line 16, delete ", 18, and 19" and insert "**and 18**".

Page 8, line 22, delete "one (1)" and insert "**three (3)**".

Page 8, line 40, delete "five (5)" and insert "**ten (10)**".

Page 9, delete lines 11 through 28.

**SB 580—LS 7554/DI 110+**



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Page 9, line 29, delete "19." and insert "**18.**".  
 Page 9, line 30, delete "fourth" and insert "**third**".  
 Page 9, line 34, delete "20(a)" and insert "**19(a)**".  
 Page 9, line 35, delete "20." and insert "**19.**".  
 Page 10, line 2, delete ", 17(3), or 18(3)" and insert "**or 17(3)**".  
 Page 10, line 8, delete ", 17(3), or 18(3)" and insert "**or 17(3)**".  
 Page 10, line 11, delete ", 17(3), or 18(3)" and insert "**or 17(3)**".  
 Page 10, line 14, delete "21." and insert "**20.**".  
 Page 10, line 17, delete "19" and insert "**18**".  
 Page 10, line 30, delete "22." and insert "**21.**".  
 Page 10, line 31, delete "20(b)" and insert "**19(b)**".  
 Page 10, line 32, delete "20(a)" and insert "**19(a)**".  
 Page 10, line 34, delete "19" and insert "**18**".  
 Page 10, line 36, delete "20(a)" and insert "**19(a)**".  
 Page 10, line 38, delete "23." and insert "**22.**".  
 Page 10, line 39, delete "19, and 20" and insert "**and 19**".  
 Page 10, line 41, delete "24." and insert "**23.**".  
 Page 11, line 11, delete "25." and insert "**24.**".  
 Page 11, delete lines 16 through 19, begin a new paragraph and insert:

**"Sec. 25. There is a rebuttable presumption that an employer did not knowingly employ an unauthorized alien in violation of section 10 of this chapter if the employer complied in good faith with the requirements of 8 U.S.C. 1324a(b).**

**Sec. 26. A court shall dismiss an action against an employer filed under section 14 of this chapter for knowingly employing an unauthorized alien if the employer establishes:**

**(1) that the employee performed agricultural labor or provided services of a temporary or seasonal nature as described in:**

**(A) 8 U.S.C. 1101(a)(15)(H)(ii)(a); or**

**(B) 8 U.S.C. 1101 (a)(15)(H)(ii)(b); and**

**(2) that the employer has complied in good faith with all federal laws and regulations governing the foreign worker program described in:**

**(A) 8 U.S.C. 1101(a)(15)(H)(ii)(a); or**

**(B) 8 U.S.C. 1101(a)(15)(H)(ii)(b)."**

Page 11, line 21, delete "23" and insert "**22**".

Page 16, line 5, delete "IC 22-5-1.5-25" and insert "**IC 22-5-1.5-24**".

(Reference is to SB 580 as printed February 20, 2009.)

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